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The Revd. John Ross, in his admirable preface to the "Mandarin," has clearly shown that his abolitionism is like that of none other, being only for the good of the people. It is, as he says, "An absolute Government, founded upon and guided by democratic principles. And, although in China a rebellion may occur at any time, a revolution, properly so called, and as understood in the West, could hardly happen, at least so far as the people themselves are concerned; there could be no tearing down of the old and setting up of a new order of things; but simply a return to ancient principles: the reigning dynasty having ceased, in the popular mind, to rule sufficiently in conformity with the maxims of old must be set up."

Of course, it goes for the mere saying that China has much to learn from the West. At the same time, it would appear as if she had long ago so many of the problems, political, social, and moral which are to-day puzzling Western students.

Constitutional principles, which are but yesterday in Europe, are centuries old in China. The capitalist, that so-called vampire of the West, has practically no existence in China, where, like so many ants, each contributes his share to the general hoard and reaps to the full the reward of his own labour. There is no leisure class and every man must either work or starve.

Then again, China's attitude towards religion, I speak, of course, of the educated classes, and has been, for centuries much the same as that of our advanced thinkers and agrees to-day too with that of most of our educated classes even outside the church. "We cannot know it; how can we know death?" spoke the Chinese sage, over two thousand years ago. "Behind the veil! He in the veil!" is the beautiful language of our greatest modern poet.

In the West, freedom is associated with franchise. One man, one vote is the rallying cry of our pioneers of progress. Yet, in spite of all that has been written on the subject there is perhaps something of the nature of a fetish worship about representative government. The ideal of which, apparently, is the right of vote for another to vote, rather than to qualify oneself to become a ruler. It is like offering a stone in the place of bread.

In this respect, the Chinese are, at the present day, really a few people than ourselves. For, whereas our rulers are all of a class—and that not necessarily the most intellectual, a seat in Parliament depending not so much upon intellectual capacity as upon money, influence and the "gift of gab"—the rulers of China are taken from the body of the people themselves and the standard of qualification, at least in principle, which is something, is intellect alone. It is true that the Chinese are, in the West, election is open to all rich and poor alike; but, as a matter of fact, how many of the rulers to-day are of the people and from the people? On the other hand, a considerable proportion of the official class in China, are men whose parents are among the very poor, and, if a labourer's son distinguishes himself, he is sure of office. With all our boasted nineteenth century freedom, it is a comparatively rare thing for a man to rise from the ranks to a position in the army and navy, or in the navy, such a thing is next to impossible.

After all, we are not in some respects, very much in the position of a little child, who, having discovered a few wonderful tricks, would teach his grandparents the whole art of living? The vast majority of people are too prone to judge of civilization entirely from a standpoint of railways, telegraphs, big guns and huge edifices, forgetting that these are mere tricks which change from age to age and have rarely to do with the solidarity and continuity of a nation. China herself is sufficient proof of this. In the West, we have the wild impetuosity of youth; in China the philosophic calm of age.

Is it to be wondered at that China should be proud of her history and of a civilization which has served her so long and so well, and that she should cling tenaciously to her grand old institutions and be loath to part with one of them, without a hard struggle? Should we not rather admire than despise her for it?

## SUPREME COURT.

IN ORIGINAL JURISDICTION.

(Before Mr. E. J. Akeley, Acting Chief Justice.)

### THE HOWQUA CASE.

The Hongkong and Shanghai Banking Corporation, the Chartered Bank of India, Australia, and China, the Chartered Mercantile Bank of India, London, and China, the New Oriental Bank Corporation, Limited, and the Comptoir National d'Escompte de Paris, Plaintiffs,

and John Murray Forbes, Ng Woon Sun Howqua, Cursey Ewens, and Ng Chow Fong, Defendants.

Mr. J. J. Francis, Q.C., and Mr. E. Robinson, instructed by Mr. A. B. Johnson (of Messrs. Johnson, Stokes, and Master), appeared for the plaintiffs, and Mr. J. Leach, Q.C., and Mr. E. H. Sharp, instructed by Mr. H. Denny and Mr. Cursey Ewens, represented Ng Woon Sun Howqua, Cursey Ewens, Ng Chan Fong, Ho Tung, Ng Lai Shan, Ng Chow Wan, Ng Heung Lun, and Ng Pak Wan.

(Continued from yesterday.)

The case was heard before me on the 17th November last, when Mr. Francis, Q.C., and Mr. Robinson appeared for the plaintiffs and Mr. Leach, Q.C., and Mr. Sharp appeared for all the defendants except John Murray Forbes, who has not appeared to the writ served upon him and an order was made to proceed *ex parte* against him. Mr. Robinson having read the pleadings, Mr. Francis opened his case, put in the *de bene esse* examination of William Howell Forbes and called Mr. Sangster, the Acting Land Officer, who produced certain documents, to which allusion will be made later on. Mr. Sangster was cross-examined on the 16th November and Mr. Francis declared his case closed. Mr. Leach elected not to call any one or put in any evidence. Counsel were further heard on the 17th, 18th, 19th, 20th, and 21st December. It will therefore be seen how very meagre is the evidence in this important and intricate case. It appears to me that there were several points which if not absolutely essential to be cleared up would at least have thrown great light on the several circumstances of the case and would have greatly facilitated the decision thereof, but both parties seemed to shirk calling any more evidence than there were absolutely obliged to do, and to have relied on all the uncertainty attending the legal questions raised by the few facts which have been proved. For instance, there is no evidence tendered to show why or under what circumstances the letter of credit was given; and the question whether Russell & Co. were largely indebted at the time of the making of the letter of hypothecation; whether those debts

have since been paid off, when the schedule in the letter of hypothecation was filed in; what were the real dealings with certain properties mentioned in that letter which have since been sold; and what became of the sale price thereof; whether as stated in the 10th paragraph of the answer the Crown lease of the property in Hongkong were in 1888 surrendered and at the request of Mr. J. M. Forbes fresh leases were granted in his name alone for the purpose of giving effect to the said charge, and for the better security of the mortgagee, and, lastly, whether any steps had been taken to ascertain what stamp the Government required to be fixed to the letter of hypothecation, and why the document was registered unstamped as it is; all these are points upon which evidence could easily have been obtained and which if enquired into might have had an important bearing on my decision. There was a question raised on the pleadings whether this suit was defective for want of parties and also another question whether the writs of execution and the prohibitory orders issued were good against the partnership firm of Russell & Co. and of the several members thereof, or whether they were good only against William H. Forbes and C. A. Tomes. The trial of the first question has by consent been postponed and the other has been decided by a judgment dated the 2nd November, 1892.

Mr. Francis in the course of his opening and summary up has argued and contended—That the broad general question was, had Forbes on the 10th July, 1891 any interest in the property? Had he any charge for Howqua and for what amount? Did he ever advance any money out of the trust fund to Russell & Co., and was there any debt due on the 31st March, 1884, to Murray Forbes as trustee for Howqua and was there any valid charge created by the letter of hypothecation of the 31st March 1884? He denies that the letter was a valid charge, but was merely a piece of waste paper, as no property was included in it or referred to in it, nor were the title deeds representing that property handed over to J. Murray Forbes, but they were kept by Russell & Co. and dealt with as their own property. Was the greater portion of the debt paid off by June, 1886, and the property released as of that date? Did Murray Forbes in February and May, 1888, take the Crown lease as trustee for Howqua as alleged in the answer? Were Russell & Co. heavily indebted in 1884 and on the 10th July, 1891, and on the 10th July, 1891, did they undertake further liabilities? Did Russell & Co. hand the title deeds to Cursey Ewens and Ng Chow Fong and give them the possession of the properties on the 27th June, 1891, and was this under the authority of and to give effect to the letter of hypothecation of March, 1884? Was that transfer voluntary and with intent to defraud and defeat creditors and therefore fraudulent and void, or was it bona fide and for valuable consideration? Was the debt of trust of June, 1876, valid and duly registered or was it voluntary and fraudulent? Was the declaration of June, 1891, voluntary and with intent to defraud or delay creditors or was it bona fide for valuable consideration? He intended to show that the property in 1884 was the property of Russell & Co., and that up to 1882 Russell & Co. dealt with the property as theirs. That the defendants have to prove the property was duly hypothecated to them, that Murray Forbes was trustee of it and that he was in possession of property or money for them and that he lent money out of the fund to Russell & Co.; that the money was due in 1884 and there was a debt not barred, because if there was no debt then this charge or settlement was a purely voluntary one. The defendants have to produce and prove the letter of hypothecation, to explain the non-existence of the schedule, and why this letter was prepared and given at the date thereon. Secondly, what is the legal effect of such a letter of hypothecation without a schedule. That the defendants have to prove that they have a good charge and to substantiate every element and iota necessary to sustain it. That the plaintiffs deny that the title deeds ever came into the possession of John Murray Forbes. That assuming that the letter of hypothecation was of any value, defendants must prove that the assignments or transfers to Ewens and Ng Chow Fong were valid, and that includes the question whether the letter of hypothecation with the schedule attached at an unknown date was a valid document for registration. Was it properly stamped, and should it not have been registered before being put into force? Was the declaration of trust of June, 1891, validly executed as plaintiffs deny that the person who executed it had any power to do so, as even if the power of attorney had by express or implied gift, Mr. Forbes would have been in breach of the powers given to him. That the defendants have to prove that they are legally in possession of the property, and that William H. Forbes was entitled to hand them over the title deeds. These were the points urged by him in his opening, and in summing up, after briefly referring to the facts, he stated that upon the evidence of Mr. Forbes it was his duty to hold that the letter of hypothecation was deliberately concocted, that up to the date of their bankruptcy Russell & Co. appeared as the owners of property absolutely unencumbered, and that the evidence showed that this property was encumbered for the payment of a debt larger than the value of the property. That after the bankruptcy the secret deed is produced, the title deeds are handed over to Forbes, and then the declaration of trust is produced. That he contends that this act and the putting them in possession and the production of the declaration of trust were acts which impeded and delayed the creditors, and he draws my special attention to them, as he contends that the action of William Howell Forbes was taken when the firm was hopelessly insolvent; that the declaration of trust by John Murray Forbes was a fraud on the creditors, and where there exists any delaying or defeating of creditors I am to look at all the circumstances. That there is no evidence that there was a valid charge or an actual trust, and that no man can remove his property from the reach of his creditors by merely making a declaration of trust. Speaking again of the letter of hypothecation he contended that at the time it was signed it was an absolute blank—it created nothing; it included property not purchased then, and yet it was the sole justification which William Howell Forbes had for handing over the title deeds and putting Ewens in possession. That as far as the evidence is concerned the schedule might have been put there three days before the registration. That according to the evidence of Forbes they did not know what they were going to hypothecate (there can be therefore no agreement between an assignor and assignee when they do not know what property is to be dealt with). That assuming the document is good in form, it is under the Statute 13 Elizabeth, chap. 5, absolutely null and void, because from its very nature and character it is calculated to delay and defeat creditors, as it could have been produced at any time, and he contended that under the Statute any disposal of property, whether voluntary or not, when the assignor was or was not indebted at the time, if so framed, or likely to operate, so as to delay or defeat creditors present or future, if bearing on it the palpable marks of fraud as recognized by the Court of Justice, will be at once set aside if the Court finds that it is not bona fide, and if the effect of it is to delay and defeat creditors. Mr. Francis then referred to the Statute 13 Elizabeth, chap. 5, reminding that the first two sections avoided all settlements, gifts, grants, etc., which had been devised or made with the intent or intent of delaying, hindering, or defrauding creditors

and others; that these sections were complete and contained no proviso or exception. That all deeds having the intent or purpose aforesaid were void. Section 6 made an exception where a gift or estate, in lands, tenements, etc., which had been upon good consideration and bona fide lawfully conveyed, etc., and the assignees must be innocent of the fraud. If any exists, Mr. Francis then proceeded to consider the recognition of the assignment. (2) The omission of the schedule which if it does not invalidate the document is a badge of fraud. (3) The concealment of the charge, which is the greatest. (4) It is a lien for a past consideration and not for the correct sum, and therefore the burden of proving the debt is on the defendant. (5) That the assignor remained in possession of the property. Mr. Francis then, as part of his speech, read passages from May on Fraud, dwelling particularly on passages respecting the badges of fraud which, unless satisfactorily explained, will be evidence of bad faith, viz., the generality of the gift; the continuance in possession; secrecy; fraudulent preference; and the debtor for the benefit of creditors to whom the conveyance is not communicated and who was not in any manner privy to it will not be good against other creditors; that the whole transaction must be free from doubt. Mr. Francis commented on the blank schedule, amounting practically to a power of revocation which has always been looked upon as a strong circumstance of fraud, and will in general make a deed void. Mr. Francis when alluding to other passages in the case, pp. 512, 513, again referred to the burden of proof as falling from the petition and answer and the facts of the case and then referred to the following cases (here follows a long list of authorities), and in the course of his argument on these various passages and authorities put forward two propositions—1st. That no disposition of property for a valuable consideration will stand if the effect of it is to delay or defeat creditors; and, secondly, if there is fraud, or signs of fraud, the disposition will be set aside, not as for valuable consideration or not or whether there were debts or not. Mr. Leach chiefly relies on the absence of evidence of any fraud given by the plaintiffs in support of his allegation contained in the paragraph of their petition that the whole of these pleadings are based solely and entirely on fraud or fraudulent intent, and contends that in that case, as this is a settlement for valuable consideration, the whole burden of proof is on the plaintiff. That the plaintiff had alleged fraud, in p. 23, they must come prepared to prove it; that he relies on Forbes's evidence to the effect that the security was given bona fide to J. M. Forbes because he had advanced that money without security, and contends that there must be facts proved which would lead the Court to say that in the mind of Forbes at the time there was an intent to defraud. Mr. Leach then dealt with the several badges or evidence of fraud put forward by the plaintiff, and contended that the case, as he said, was a fraudulent one, pointing out the difference between cases of voluntary settlement and conveyances for valuable consideration, and after explaining the different facts, which Mr. Francis has termed badges of fraud, contended that these were all consistent with honest intention on the part of Howell Forbes to secure the sum advanced by J. Murray Forbes out of the Howqua trust; and that as it was for valuable consideration, must, looking at all the circumstances of the case, be held to be a valid one. Mr. Leach then said that he was satisfied that there was actual fraud. In a word, Mr. Leach's contention has been that the plaintiffs having alleged fraud, it is for them to prove it, and they have not done so. I will now proceed to set out the facts which I find admitted or proved. I will then refer to the large number of cases which have been cited and then give my grounds for my decision. Beyond Mr. Forbes's statement that the letter was the first security given, and that the only object was to secure J. M. Forbes, as he should not have lent money without security, we have no evidence under what circumstances it was asked for, or given; but by letter or memorandum dated the 21st March, 1884, addressed to John Murray Forbes, Jr., trustee for Howqua, and signed "Russell & Co.," the said Russell & Co. acknowledged to be indebted with him the sum of £100,000 for the purchase of property, and hereunder mentioned as collateral security for the payment of our promissory note dated the 21st day of March, 1884, for the sum of two hundred and fifty-eight thousand, Shanghai currency, and interest thereon according to the rate of seven per cent. charged by year. The letter then went on to confer certain powers on the said John Murray Forbes, in case of default of the payment of the said sum. After the signature of the letter, the plaintiffs and the body of the letter: "Particulars of securities above referred to." There is no doubt that, at the time the said letter was signed and handed over to John Murray Forbes no particular signature was added afterwards to another handwriting. At the bottom of that page and of the next are the initials "R. & Co.," which to all appearances were written at no place at the time of the signing of the letter. According to that schedule of particulars the following Hongkong real estate was pledged—

Land Lot No. 84, The Hermitage, Island Lot No. 148, Rose Hill, Island Lot No. 149, Rose Hill, Island Lot No. 150, Rose Hill, Island Lot No. 151, Rose Hill, Island Lot No. 152, Rose Hill, Island Lot No. 153, Rose Hill, Island Lot No. 154, Rose Hill, Island Lot No. 155, Rose Hill, Island Lot No. 156, Rose Hill, Island Lot No. 157, Rose Hill, Island Lot No. 158, Rose Hill, Island Lot No. 159, Rose Hill, Island Lot No. 160, Rose Hill, Island Lot No. 161, Rose Hill, Island Lot No. 162, Rose Hill, Island Lot No. 163, Rose Hill, Island Lot No. 164, Rose Hill, Island Lot No. 165, Rose Hill, Island Lot No. 166, Rose Hill, Island Lot No. 167, Rose Hill, Island Lot No. 168, Rose Hill, Island Lot No. 169, Rose Hill, Island Lot No. 170, Rose Hill, Island Lot No. 171, Rose Hill, Island Lot No. 172, Rose Hill, Island Lot No. 173, Rose Hill, Island Lot No. 174, Rose Hill, Island Lot No. 175, Rose Hill, Island Lot No. 176, Rose Hill, Island Lot No. 177, Rose Hill, Island Lot No. 178, Rose Hill, Island 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